Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Policy Regarding Character Qualifications in Broadcast Licensing

Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications

POLICY STATEMENT AND ORDER

Adopted: May 10, 1990; Released: May 11, 1990

By the Commission:

1. The Commission herein announces certain modifications to its policies regarding character qualifications previously enunciated in *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 (1986), *recon. granted in part, denied in part*, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Association for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. June 11, 1987) (hereinafter referred to as *Character Policy Statement)*. We are also amending our rules to make the provisions of 47 C.F.R. § 73.1015 regarding misrepresentation applicable to all applications and/or statements filed with the Commission, and we are adding a new section 1.65(c) requiring broadcast licensees to report adjudications relevant to character qualifications that are issued during the license term.

2. After several years of experience with, and further consideration of, the policies enunciated in the *Character Policy Statement*, we have determined that certain adjustments are in order. In our view, the *Character Policy Statement* took an overly narrow view of the range of misconduct that should be relevant in licensing decisions covered by it. Like the policies enunciated in the *Character Policy Statement*, the modifications announced herein are statements of policy that will guide our future decisions. *See American Hospital Association v. Bowen*, 834 F.2d 1037, 1046 (D.C. Cir. 1987). Accordingly, while we intend to continue to be guided by the policies set forth in the *Character Policy Statement*, as modified herein, we remain "free to exercise . . . discretion in situations that arise." *Guardian Federal Savings & Loan Ass'n v. Federal Savings & Loan Insurance Co.*, 589 F.2d 658, 666 (D.C. Cir. 1978).[1]

A. Range of Relevant Non-FCC Misconduct

3. In the *Character Policy Statement*, we indicated that the Commission would concern itself with "misconduct which demonstrates the proclivity of an applicant or licensee to deal truthfully with the Commission and to comply with our rules and policies." 102 FCC 2d at 1190-91. We therein generally indicated that the Commission would consider only adjudicated (a) fraudulent representations to governmental units, (b) criminal misconduct involving false statements or dishonesty, and (c) broadcast-related violations of antitrust or other laws dealing with competition. 102 FCC 2d at 1195-1197, 1200-1203. However, upon further reflection, we believe a propensity to comply with the law generally is relevant to the Commission's public interest analysis, and that an applicant's or licensee's willingness to violate other laws, and, in particular, to commit felonies, also bears on our confidence that an applicant or licensee will conform to FCC rules and policies.

4. Thus, evidence of any conviction for misconduct constituting a felony[2] will be relevant to our evaluation of an applicant's or licensee's character.[3] Because all felonies are serious crimes, any conviction provides an indication of an applicant's or licensee's propensity to obey the law. We also recognize that not all convictions for serious crimes are equally probative, but, in the context of this *Policy Statement*, it is not necessary or appropriate to establish a "hierarchy" of felonies that may arise in individual cases.

5. While conviction for a felony raises questions of whether an applicant or licensee has the requisite propensity to obey the law, we continue to believe that there are mitigating factors that must be taken into consideration in our deliberations. We will continue to look at the kinds of factors set forth in the *Character Policy Statement* in making determinations in particular cases, *e.g.*, the willfulness of the misconduct, the frequency of the misconduct, the currentness of the misconduct, the seriousness of the misconduct, the nature of the participation (if any) of managers or owners, efforts made to remedy the wrong, overall record of compliance with FCC rules and policies, and rehabilitation.[4] *See* 102 FCC 2d at 1227-29.

6. The *Character Policy Statement* stated that "broadcast related" violations of the antitrust laws were specifically relevant. Because of the interrelationship of the mass media, we see no reason to limit our focus to broadcast related violations. We therefore believe that adjudicated violations of antitrust or anticompetitive laws involving any media of mass communications, as defined in 47 U.S.C. § 309(i), also are relevant to our licensing decisions. However, as with felony convictions, the same factors of mitigation will apply, and applicants and licensees will be permitted to demonstrate that the misconduct should not result in disqualification.

B. Pending Proceedings Relating to Non-FCC Misconduct

7. We continue to believe that it is appropriate to refrain from making licensing decisions based on mere allegations of relevant non-FCC misconduct, even where those allegations have resulted in an indictment or are otherwise in the process of being adjudicated by another agency or court. *Character Policy Statement*, 102 FCC 2d at 1204-05.[5] We indicated in the *Character Policy Statement* that we retain discretion to condition grants on the outcome of proceedings involving non-FCC misconduct.

Id. at 1206 n.66. We now wish to emphasize that where such matters remain pending in another forum we may, in appropriate cases, condition any grant of the application before us on the outcome of that proceeding.[6] That is, we will consider conditioning the grant in any case in which a matter being litigated in another forum could result in an adjudication that an applicant before the FCC has engaged in relevant non-FCC related misconduct and an adjudication of that misconduct raises serious questions as to whether the applicant before the FCC is possessed of the requisite propensity to obey the law. Where we have determined that a condition is appropriate, we will generally await the decision by the ultimate trier of fact before taking any additional action. If that decision is adverse to the applicant, we will revisit the conditioned grant to determine whether we would have made that grant if the adjudicated misconduct had been before us. We will consider the appropriateness of adding a condition in connection with all types of broadcast applications, *e.g.*, applications for new licenses and the renewal of existing licenses.[7]

C. Impact on Existing Licensees

8. Generally, we do not intend to change our policies regarding the case-by-case determination of whether an existing licensee, designated for hearing on character issues with respect to one license, may buy or sell other licenses or have other authorizations renewed. *See Character Policy Statement*, 102 FCC 2d at 1223-25; *Transferability of Broadcast Licenses*, 53 RR 2d 126 (1983). We wish to make clear, however, that, in appropriate cases, the Commission may condition the grant of any application involving a licensee that has been designated for hearing on character issues. If the decision in the hearing is adverse to the licensee, we will revisit any such conditioned grants to determine whether we would have made the grant if the adverse hearing determination had been before us.

D. Form Changes

9. In order to consider the application of these policies in individual cases, a number of FCC forms, and/or the instructions thereto, will need to be amended to include appropriate questions concerning adjudicated or pending adjudications of relevant misconduct by the applicant. Such form modifications will broaden the class of relevant misconduct to include all felonies and mass media related antitrust or anticompetitive matters. In addition, renewal applicants, as well as assignors and transferors, will be required to provide information regarding relevant pending adjudications involving fraudulent representations to governmental units, felonies, and mass media related antitrust or anticompetitive matters.[8] We will delegate to the Managing Director, in consultation with the Chief, Mass Media Bureau, the authority to make such form changes.

E. Rule Changes

10. In the *Character Policy Statement*, we adopted a rule prohibiting any applicant, licensee, or permittee from making any written "misrepresentation or willful material omission[s] bearing on any matter within the jurisdiction of the Commission." 47 C.F.R. § 73.1015. On its face, that rule is not limited to broadcast applicants, licensees, and permittees. Nevertheless, because it was placed in Part 73 of our rules, it is technically not applicable to other applicants, licensees, and permittees. However, all Commission licensees are already required to tell the truth to the Commission. *See* 47 U.S.C. § 312(a)(1).[9] We believe that it is appropriate for the Commission to restate the clear intent of section 312(a)(1) as a rule generally applicable to all applicants, licensees, and permittees for all radio facilities. Accordingly, we will amend Part 1 of our rules by addition of a new section 1.17 that is substantially the same as section 73.1015, except that, by virtue of its location in Part 1, it will be applicable to applicants, licensees, and permittees in all radio services.

11. As applicants are required to provide information on pending adjudications of relevant misconduct, any material change in the status of such pending adjudications (*e.g.*, convictions or dismissals) must be reported to the Commission pursuant to section 1.65 of our rules. 47 C.F.R. § 1.65(a). In this regard, we are also adding a new section 1.65(c) to require broadcast permittees and licensees to report adjudications relevant to character qualifications that are issued during the license term.[10]

CONCLUSION

12. Accordingly, IT IS ORDERED that the Commission's rules are amended by the addition of a new section 1.17 and a new section 1.65(c) as set forth in the Appendix hereto. The new section 1.17 SHALL BE EFFECTIVE 30 days from publication of a summary of this Policy Statement and Order in the Federal Register. The new section 1.65(c) is subject to approval by the Office of Management and Budget under the Paperwork Reduction Act and SHALL BE EFFECTIVE 90 days from publication of a summary of this *Policy Statement and Order* in the Federal Register.

13. IT IS FURTHER ORDERED that the Managing Director, in consultation with the Chief, Mass Media Bureau, is delegated authority to amend all applicable FCC forms, in accordance with the provisions of this *Policy Statement and Order*, subject to the approval of the Office of Management and Budget under the Paperwork Reduction Act.

14. The action herein is taken pursuant to section 4(i), 303(r), 308(b), 312, 319(a) and 403 of the Communications Act of 1934, as amended.

For further information regarding this proceeding, contact Martin Blumenthal, Office of General Counsel, (202) 254-6530.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

LIST OF CFR SUBJECTS AFFECTED:

47 CFR 1 Administrative Practice and Procedure

Radio

APPENDIX

Part 1 of Title 47 of the C.F.R. is amended as follows:

1. The authority citation for Part 1 continues to read: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. § 154, 303; Implement, 5 U.S.C. § 552, unless otherwise noted.

2. Section 1.17 is added to 47 C.F.R. Part 1, to read as follows:

1. 17 Truthful written statements and responses to Commission inquiries and correspondence.

The Commission or its representatives may, in writing, require from any applicant, permittee or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked, or to some other matter within the jurisdiction of the Commission. No applicant, permittee or licensee shall in any response to Commission correspondence or inquiry or in any application, pleading, report or any other written statement submitted to the Commission, make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission.

NOTE: Section 1.17 is limited in application to written matter. It implies no change in the Commission's existing policies respecting the obligation of applicants, permittees and licensees in all instances to respond truthfully to requests for information deemed necessary to the proper execution of the Commission's functions.

3. Section 1.65 is amended by adding a new subsection (c) to read as follows:

* * * * *

(c) All broadcast permittees and licensees must report to the Commission any adverse finding or adverse final action taken by any court or administrative body, within 30 days of the issuance of any such adverse finding or adverse final action, that involves conduct bearing on the permittee's or licensee's character qualifications and that would be reportable in connection with an application for renewal as reflected in the renewal form.

FOOTNOTES

[1] Notice and comment procedures are not required for the issuance of policy statements. *See* 5 U.S.C. § 553(b)(A). While we chose to use such procedures in the *Character Policy Statement*, we decline to do so with respect to the modifications set forth herein.

[2] Under federal law, a felony is a crime punishable by death or imprisonment for a term exceeding one year. 18 U.S.C. § 1.

[3] Moreover, we retain the discretion to consider serious misdemeanor convictions in appropriate or compelling cases, particularly where there is a pattern of such convictions.

[4] Rehabilitation is generally a factor when misconduct occurred prior to the filing of the application in question. Whether an applicant has been rehabilitated will necessarily turn on the facts of each case. Among other factors, the Commission will consider: (1) whether the applicant has not been involved in any significant wrongdoing since the alleged misconduct occurred; (2) how much time has elapsed since the misconduct; (3) the applicant's reputation for good character in the community; and (4) meaningful measures taken by the applicant to prevent the future occurrence of misconduct. *RKO General, Inc.*, 5 FCC Rcd 642, 644 (1990). Further, where previous Commission consideration of the misconduct resulted in the denial of an application, the deterrent impact of our previous action may provide a basis for concluding that a recurrence of misconduct is unlikely. *Id.*

[5] However, we also continue to believe that, where an applicant has allegedly engaged in nonbroadcast misconduct "so egregious as to shock the conscience and evoke almost universal disapprobation," such conduct "might be a matter of Commission concern even prior to adjudication by another body." *Character Policy Statement*, 102 FCC 2d at 1205, n.60.

[6] As indicated in the *Character Policy Statement*, non-FCC misconduct is considered to have been adjudicated when the "ultimate trier of fact" renders its decision. Generally, the "ultimate trier of fact" is that tribunal whose factual findings are not subject to review *de novo*. 102 FCC 2d at 1205 n.62. We will continue to consider adjudications by the "ultimate trier of fact" during the pendency of any appeal of that decision. 102 FCC 2d at 1205.

[7] At this time, we do not intend to express any further opinion on the issue of a seller's character qualifications. That issue was remanded to the Commission for further consideration in *Coalition for the Preservation of Hispanic Broadcasters v. FCC*, 893 F.2d 1349 (D.C. Cir. 1990). However, the U.S. Court of Appeals for the District of Columbia Circuit has since granted our petition for rehearing *en banc*. *Order* in Case No. 87-1285, March 27, 1990. We will therefore address the issue of seller qualifications in a separate proceeding.

[8] Currently, only new applicants, assignees, and transferees are required to provide such information.

[9] Accordingly, we find for good cause that notice and comment is not required for this rule change. *See* 5 U.S.C. § 553(b)(B).

[10] Because this rule change is procedural, notice and comment are not required. *See* 5 U.S.C. § 553(a)(A).